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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Michael J. Faulks

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EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

11/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/719,639	FAULKS ET AL.	
	Examiner	Art Unit	
	MELANIE J. HAND	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18, 21-30 and 32-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-36 is/are allowed.
- 6) ☒ Claim(s) 10-18, 21-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed August 11, 2009 with regard to claim 10 have been fully considered but they are not persuasive. As to the argument that the Miller reference concerns itself with the suppression of noise caused when the fastening tape and frontal tape portion are separated, it is understood by the examiner from applicant's disclosure and claims that the instant invention concerns itself with noise reduction, which can also be considered to be a suppression, and the fact that the portions of the diaper where noise is suppressed are different in the Miller reference is immaterial. The rejection states that the materials of the frontal tape and backsheet in the Miller article are identical and therefore the same result would be accomplished, and the motivation to coat the backsheet with the same noise-reducing release agent is self-explanatory, i.e. noise reduction would be considered by one of ordinary skill in the art to be a benefit. Such a coating on the backsheet would necessarily reduce the noise of the material as there is no other portion of the diaper that would contact a layer of release agent when it is coating the backsheet.
2. As to the argument that the curing or processing methods disclosed by Miller performed after coating, it is examiner's position that curing, especially UV irradiation, could certainly be performed on a coating with a basis weight of 3 gsm with no adverse effect. As that appears to be the only provision disclosed by Miller that could feasibly limit the basis weight of the noise-reducing release agent coating, and applicant has not disclosed any criticality for the claimed basis weight, the rejection is maintained.

3. Applicant's arguments, see Remarks, filed August 11, 2009, with respect to the rejection of claim 32 under 35 U.S.C. 103 have been fully considered and are persuasive. The rejection of claim 32 under 35 U.S.C. 103 has been withdrawn.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 10-13, 15-18, 21-25 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (EP 661,960 B1).

With respect to **claim 10**: Miller discloses a reduced-noise sheet comprising the following: a substrate layer 9 of frontal tape 4, which defines a first surface having a surface area and a target region for engagement by fastener tapes 6; and a noise-reducing layer in the form of a layer 8 of release agent solution which substantially completely coats said target region, said noise-reducing layer 8 having a basis weight of 0.1-1.0 gsm, which does not overlap the claimed range of at least about three grams per square meter. However applicant has not established any criticality for the claimed range. Since Miller also discloses that the release agent is

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responsible for establishing a sufficient peel strength between the fastener tapes 6 and frontal tape 4 without ripping the tape, while also reducing noise, the basis weight of the release agent/noise-reducing layer is a result effective variable. It would be obvious to one of ordinary skill in the art to modify the article of Miller such that the basis weight of the noise-reducing layer falls within the claimed range with a reasonable expectation of success to establish optimal peel strength between the fastener tape and frontal tape while reducing noise level while detaching the tapes. It has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

Miller discloses that a backsheet has the frontal tape disposed thereon with the noise-reducing layer but does not disclose a noise-reducing backsheet. However since the substrate material of the frontal tape is identical to the backsheet, the noise reducing layer could also be coated thereon instead of coating on a frontal tape substrate. It would be obvious to one of ordinary skill in the art to do so, since the release agent both allows some adhesion to the backsheet which would allow attachment of the fastening tapes during wear while still allowing detachment and providing the reduction in noise level upon detachment.

With respect to **claim 11**: The target region disclosed by Miller is at least about 75% of said surface area of said first surface inasmuch as Miller discloses that the one side of the frontal tape is coated with the release agent, which examiner interprets to mean about 100% of the target region, also in light of the release agent's disclosed intended purpose which is to engage the fastening tapes which can be attached anywhere on the frontal tape.

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With respect to **claim 12**: Miller discloses that said noise-reducing layer 8 has a basis weight of 0.1-1.0 gsm, which does not overlap the claimed range of at least about four grams per square meter. However applicant has not established any criticality for the claimed range. Since Miller also discloses that the release agent is responsible for establishing a sufficient peel strength between the fastener tapes 6 and frontal tape 4 without ripping the tape, while also reducing noise, the basis weight of the release agent/noise-reducing layer is a result effective variable. It would be obvious to one of ordinary skill in the art to modify the article of Miller such that the basis weight of the noise-reducing layer falls within the claimed range with a reasonable expectation of success to establish optimal peel strength between the fastener tape and frontal tape while reducing noise level while detaching the tapes. It has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Staney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 13**: The noise-reducing layer 8 disclosed by Miller consists essentially of a urethane, i.e. it consists essentially of polyurethanes. (Page 3, lines 38-40)

With respect to **claim 15**: The substrate layer 9 comprises an oriented polypropylene film (hereafter "OPP"), which is a thermoplastic, polymeric film. (Page 3, lines 33-35)

With respect to **claim 16**: The substrate layer is non-elastomeric inasmuch as it is made of OPP, which is not an elastomeric material.

With respect to **claim 17**: The reduced-noise backsheet further comprises a nonwoven layer, backsheet 2 adhered to said substrate layer 9.

With respect to **claim 18**: The substrate layer 9 comprises polypropylene, specifically OPP.
(Page 3, lines 33-35)

With respect to **claim 21**: Miller discloses a disposable absorbent article comprising the following: a body-side liner, i.e. water-permeable interior sheet 3; a garment-side outer cover, i.e. backsheet 2, and an absorbent assembly/batt disposed between said body-side liner and said garment-side outer cover, said outer cover comprising: a liquid-impermeable substrate layer 9 of frontal tape 4 comprised of a thermoplastic, polymeric material (OPP) and which defines a first surface having a surface area and a target area; and a noise-reducing layer in the form of a layer 8 of release agent which substantially completely coats said target region, said noise-reducing layer having a basis weight of 0.1 – 1.0 gsm, which does not overlap the claimed range of at least about three grams per square meter. However applicant has not established any criticality for the claimed range. Since Miller also discloses that the release agent is responsible for establishing a sufficient peel strength between the fastener tapes 6 and frontal tape 4 without ripping the tape, while also reducing noise, the basis weight of the release agent/noise-reducing layer is a result effective variable. It would be obvious to one of ordinary skill in the art to modify the article of Miller such that the basis weight of the noise-reducing layer falls within the claimed range with a reasonable expectation of success to establish optimal peel strength between the fastener tape and frontal tape while reducing noise level while detaching the tapes. It has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Staney*, 205 USPQ 215 (C.C.P.A. 1980)

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With respect to **claim 22**: The target region disclosed by Miller is at least about 50% of said surface area of said first surface inasmuch as Miller discloses that the one side of the frontal tape is coated with the release agent, which examiner interprets to mean about 100% of the target region, also in light of the release agent's disclosed intended purpose which is to engage the fastening tapes which can be attached anywhere on the frontal tape.

With respect to **claim 23**: The target region disclosed by Miller is at least about 75% of said surface area of said first surface inasmuch as Miller discloses that the one side of the frontal tape is coated with the release agent, which examiner interprets to mean about 100% of the target region, also in light of the release agent's disclosed intended purpose which is to engage the fastening tapes which can be attached anywhere on the frontal tape.

With respect to **claim 24**: Miller discloses that said noise-reducing layer 8 has a basis weight of 0.1-1.0 gsm, which does not overlap the claimed range of at least about four grams per square meter. However applicant has not established any criticality for the claimed range. Since Miller also discloses that the release agent is responsible for establishing a sufficient peel strength between the fastener tapes 6 and frontal tape 4 without ripping the tape, while also reducing noise, the basis weight of the release agent/noise-reducing layer is a result effective variable. It would be obvious to one of ordinary skill in the art to modify the article of Miller such that the basis weight of the noise-reducing layer falls within the claimed range with a reasonable expectation of success to establish optimal peel strength between the fastener tape and frontal tape while reducing noise level while detaching the tapes. It has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Staney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 25**: The noise-reducing layer 8 disclosed by Miller consists essentially of a urethane, i.e. it consists essentially of polyurethanes. (Page 3, lines 38-40)

With respect to **claim 26**: The noise-reducing layer 8 disclosed by Miller consists essentially of at least one of styrene block copolymers and olefin-based adhesives.

With respect to **claim 27**: The substrate layer 9 comprises an oriented polypropylene film (hereafter "OPP"), which is a thermoplastic, polymeric film. (Page 3, lines 33-35)

With respect to **claim 28**: The substrate layer is non-elastomeric inasmuch as it is made of OPP, which is not an elastomeric material.

With respect to **claim 29**: The reduced-noise backsheet further comprises a nonwoven layer, backsheet 2 adhered to said substrate layer 9.

With respect to **claim 30**: The substrate layer 9 comprises polypropylene, specifically OPP. (Page 3, lines 33-35)

Allowable Claims

7. Claims 32-36 are allowed.

Reasons for Allowance

8. The following is an examiner's statement of reasons for allowance: Applicant's arguments overcoming the rejection of claim 32 over the closest prior art of record, Miller, were persuasive. As such, all outstanding claim rejections of claims 32-36 are withdrawn and the claims are in condition for allowance.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761